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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 18-63, 17-105; FCC 18-34]

Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to streamline the process for reauthorizing television satellite stations when they are assigned or transferred in combination with their previously approved parent station. This document continues the Commission's efforts to modernize its regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties may submit comments and replies, identified by MB Docket Nos 18-63, 17-105, by any of the following methods:

- *Federal Communications Commission's website:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

• *Mail*: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Julie Salovaara, Industry Analysis Division, Media Bureau, FCC, at Julie.Salovaara@fcc.gov or (202) 418-2330.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 18-34, in MB Docket Nos. 18-63, 17-105, adopted on March 22, 2018, and released on March 23, 2018. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at https://apps.fcc.gov/edocs_public/. The document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. *Introduction*: In this NPRM, the Commission proposes to streamline the process for reauthorizing television satellite stations when they are assigned or transferred in combination

with their previously approved parent station. In accordance with Note 5 of section 73.3555 of the Commission's rules, authorized television satellite stations, which generally retransmit some or all of the programming of their parent station, are excepted from media ownership limits. In order for the exception to apply, a television station must obtain authorization as a satellite from the Commission, and it must be reauthorized as a satellite at the time of assignment or transfer of control. In response to the Public Notice launching the Commission's Modernization of Media Regulation Initiative, commenters assert that the reauthorization of the satellite exception can be costly and burdensome for both the station owner and the Commission. The Commission proposes to streamline the reauthorization process in order to eliminate potentially needless regulatory expense and delay. With this proceeding, the Commission continues its efforts to modernize its regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

2. *Background: Regulatory Treatment of Television Satellite Stations.* Television satellite stations are full-power terrestrial broadcast stations authorized under part 73 of the Commission's rules that generally retransmit some or all of the programming of another television station, known as the parent station, which typically is commonly owned or operated with the satellite station. The Commission initially authorized television satellite stations in sparsely populated areas with insufficient economic bases to support full-service stations and more recently in larger markets when the proposed satellite could not operate as a full-service station. Television satellite stations are excepted from the local and national television multiple ownership limits, but from a practical perspective, the ownership exception is significant only for purposes of the Local Television Ownership Rule, which prohibits an entity from owning or controlling more than two television stations in the same local market.

3. In 1991, the Commission revised the standards for television stations seeking satellite status and the corresponding ownership exception. The Commission adopted a rebuttable presumption that stations would qualify for satellite status if: (1) there was no City Grade overlap between the parent and the satellite station; (2) the satellite station served an underserved area; and (3) no alternative operator was ready and able to construct or to purchase and operate the satellite station as a full-service station. The Commission established detailed evidentiary standards for meeting the second and third criteria. If an applicant could not qualify for the presumption, the Commission would evaluate the proposal on an *ad hoc* basis and grant the application if there were compelling circumstances warranting approval.

4. To help encourage satellite stations to air more of their own programming, the Commission eliminated the previous requirement that no more than five percent of a station's programming could be locally originated in order for the station to maintain its satellite status. The Commission stated that allowing satellite stations to exceed that limit would promote its diversity and localism goals. It recognized, however, that its action had potential ramifications for subsequent transfers or assignments of such stations because a satellite station could become more like a full-service station based on its origination of local programming. Accordingly, it required applicants seeking to transfer or assign a parent/satellite combination that otherwise would violate the Local Television Ownership Rule to demonstrate that the conditions that had warranted satellite status continued to exist at the time of any subsequent transfer or assignment.

5. The transition to digital television service in 2009 complicated the assessment of the first prong of the Commission's presumptive standard in that there is no digital counterpart to a station's analog City Grade contour. Accordingly, in the 2010/2014 Quadrennial Review proceeding, the Commission clarified that, consistent with case law developed after the

transition, it will evaluate requests for new and continued satellite status on an *ad hoc* basis, while, as a practical matter, the second and third prongs of the Commission's presumptive standard still serve as guidelines under the *ad hoc* review. This shift in approach did not change the burden of proof for initial satellite station authorizations or requests for continued satellite status in the transfer or assignment context.

6. Modernization of Media Regulation Initiative. In May 2017, the Commission issued a Public Notice launching a review of its media regulations to eliminate or modify rules that are outdated, unnecessary, or unduly burdensome. In response to that Public Notice, commenters urge the Commission to streamline the process for demonstrating that a television satellite station remains eligible for satellite status in connection with an assignment or transfer of the station. They argue that the current process for reauthorizing a satellite exception is lengthy, costly, unnecessary, and serves no rational purpose.

7. *Discussion:* We tentatively conclude that the process for reauthorizing satellite status when a television satellite station is assigned or transferred in combination with its previously approved parent station should be streamlined. We believe that the existing process imposes an unnecessary burden on station owners by requiring them to expend time and resources in demonstrating that a satellite exception is warranted for a previously approved parent/satellite station combination where the underlying circumstances have not materially changed. Further, the time and expense involved in obtaining a reauthorization may create an artificial disincentive for potential purchasers of satellite stations, which typically are in rural and economically depressed areas and often in need of investment. In addition, the sale of a satellite station does not necessarily indicate that the underlying conditions warranting the satellite authorization have changed, as evidenced by the fact that the Commission has never rejected a request for a

continued satellite exception despite the numerous reauthorization requests it has processed. This approval record raises questions as to the benefit gained by spending Commission resources on time-consuming reviews of detailed reauthorization requests.

8. We seek comment on ways to streamline the reauthorization process while also ensuring that the process affords the Commission and the public adequate information to determine whether reauthorization serves the public interest. We tentatively conclude that the public interest will be served by permitting a previously approved parent/satellite station combination to be assigned or transferred without the reauthorization request that currently is required and without a written Commission decision granting reauthorization if the following two conditions are met. First, we propose that the assignment or transfer application must include a certification by both parties to the transaction that the underlying circumstances that the Commission relied upon in granting the current satellite authorization have not changed materially since the issuance of the most recent authorization. Second, we propose that the assignment or transfer application must include a complete copy of the most recent written Commission decision (e.g., Letter Order) granting the satellite exception for the current parent/satellite combination. The existing petition to deny/informal comment process applicable to the assignment or transfer of licenses would provide interested parties that disagree with the applicants' certification an opportunity to present their objections. The applicants could respond within the normal pleading cycle, and the Commission then would have a record upon which to make a determination. We believe that this process will provide the Commission and the public with a sufficient opportunity to review the transaction to ensure that continued satellite status is warranted. If any objections to the satellite station's reauthorization are raised, any decision on the application would require a written decision that would include an explanation for the

reauthorization decision. Absent such objections, however, the application could be granted without a written decision (provided that there are no other issues that require designation of the application for hearing or otherwise warrant a written decision).

9. We seek comment on all aspects of this proposal. For example, what impact, if any, would the proposal have on small entities? In addition, what showing should the Commission require in the event that the Commission's most recent decision granting satellite status, which may never have been published or put in the public record, is unavailable or does not specify the facts and circumstances surrounding the grant? We also seek comment on how the Commission should memorialize its reauthorization approval when the approval of an assignment or transfer application is not a written decision explaining the scope and basis of the Commission's decision but instead is recorded only on the FCC Form 732. In such circumstances, what information should the Commission include in the FCC Form 732 authorization regarding the satellite station? In addition, to obtain reauthorization approval, is it sufficient for applicants to certify generally that there has been no material change in the circumstances that warranted the station's most recently authorized satellite status? What types of changes would be considered material? For example, would a change in contour be material if the lack of contour overlap was part of the basis upon which the underlying satellite status was granted? If the current authorization is not based on a finding that the service area was underserved or on a finding that the licensee undertook a diligent but unsuccessful search for a buyer, but instead on alternative showings, what would constitute a material change in circumstances? Alternatively, should the Commission require the applicants to attest to a set of more specific facts relevant to the Commission's usual considerations in determining satellite status? For example, where relevant, should the applicants specifically certify that the service area remains underserved as the

Commission has defined that term? What other specific certifications, if any, would be useful to require without defeating the purpose of streamlining the reauthorization process?

10. We also seek comment on whether any streamlined reauthorization procedures we adopt should be restricted to transactions that involve the assignment or transfer of a television satellite station in combination with its previously approved parent station. A commenter argued that satellite status should not be limited to a particular parent/satellite combination. The suggestion was that licensees should have the flexibility to change a satellite station's parent without needing to repeat the full showing required for an initial satellite exception. On the other hand, satellite station determinations are fact specific inquiries that rely in part on the identity of the specific stations involved. Unlike renewals of previously approved parent/satellite combinations, the Commission and the public have never had an opportunity to review the particular circumstances of the new combination. Given that there may be public interest benefits associated with a change in parent station and the fact that the public has the opportunity to raise any concerns regarding a reauthorization request, we seek comment on whether we should or should not apply any streamlined process we may adopt to transactions involving a change in a satellite station's parent.

11. Ultimately, we believe that this proposal to streamline the reauthorization process for television satellite stations is consistent with our efforts to modernize our regulations and will encourage investment in such stations by removing unnecessary constraints on their transferability. We seek comment on the costs and benefits associated with our proposals. For example, how much time, effort, and expense do reauthorization requests usually require now, and what cost savings could be achieved by allowing licensees to certify that there have been no material changes, given that a licensee must exercise due diligence in ascertaining the facts

needed to support any such certification? Are there any benefits other than cost savings that are likely to occur from streamlining, and if so, how likely are such benefits to arise from the streamlining proposal we offer for comment? Based on the Commission's experience processing transactions that include satellite station reauthorizations, we do not believe that the proposals herein will impair our, or interested parties', ability to meaningfully review such transactions. We seek comment, however, on any negative consequences of streamlining, including whether this proposal will require applicants or other stakeholders to incur any additional costs beyond what they currently incur. We also seek comment on any alternative approaches. Any party advocating for an alternative approach should be as detailed as possible and should explain the costs and benefits of any recommended approach.

Procedural Matters

12. *Initial Regulatory Flexibility Act Certification:* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

13. In this NPRM, the Commission seeks comment on how to streamline the process for reauthorizing television satellite stations when they are assigned or transferred in combination

with their previously approved parent station. The potential rule changes discussed in the NPRM stem from a Public Notice issued by the Commission in May 2017 launching an initiative to modernize the Commission's media regulations. Commenters in the proceeding argued that the Commission should streamline the process for demonstrating that a television satellite station remains eligible for satellite status in connection with an assignment or transfer of the station because, they contend, the current process is lengthy, costly, unnecessary, and serves no rational purpose. The proposals upon which the NPRM seeks comment are intended to reduce unnecessary regulation and regulatory burdens that can impede competition and innovation in the media marketplace.

14. The Commission estimates that the rule changes proposed in this NPRM, if adopted, would reduce the time and expense associated with reauthorizing television satellite stations when they are assigned or transferred in combination with their previously approved parent station. For example, the NPRM proposes that, instead of needing to make the same type of showing that was required for the station's initial satellite authorization, the parties to the proposed transaction could certify that there has been no material change in the underlying circumstances since the current satellite authorization was granted by the Commission. In addition, a complete copy of the written Commission decision granting the current satellite exception would need to be provided with the assignment or transfer application. The NPRM seeks comment on various aspects of the streamlining proposal and on any alternative approaches.

15. The Commission believes that the proposals on which it seeks comment in this NPRM would reduce costs and burdens currently associated with transactions involving television satellite stations, including those that are small entities. As transactions involving

television satellite stations usually comprise a very small percentage of the total number of television transactions processed by the Commission and originate from a similarly small segment of the overall industry, the number of small entities impacted would not be substantial for RFA purposes. Therefore, the Commission certifies that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the NPRM, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the Federal Register.

16. *Initial Paperwork Reduction Act Analysis:* The document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in the document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

17. *Ex Parte Rules:* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and

(2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

18. *Comments and Replies:* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

19. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

20. *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this

proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

21. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

22. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

23. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

24. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

25. *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

26. *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov

or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

27. *Additional Information:* For additional information on this proceeding, contact Julie Salovaara of the Industry Analysis Division, Media Bureau, at Julie.Salovarra@fcc.gov or (202) 418-2330.

28. *Ordering Clauses:* Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, and 310, this Notice of Proposed Rulemaking IS ADOPTED.

29. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

[FR Doc. 2018-07508 Filed: 4/10/2018 8:45 am; Publication Date: 4/11/2018]